IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1516 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HIMANSHU MADANLAL SHAH - Appellant(s)

Versus

DR.B.M.POOJARI - Defendant(s)

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Appearance :
MR BHARAT JANI for Appellant(s) : 1,
MR SHITAL R PATEL for Defendant(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 22/09/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

`Rule. With consent of parties the matter is finally

heard.

The appellant being aggrieved by the order dated 7.1.2004 passed in Civil Suit No. 211 of 2000 by the learned Civil Judge (S.D.), Baroda, granting the respondent's application under Order VII Rule 11 of the Civil Procedure Code, observing that the suit is barred by limitation and rejecting the plaint, is before this Court with a submission that the Court below had no jurisdiction to grant the application filed under Rule 11 of Order VII because the provisions of Rule 11 were not applicable.

The short facts necessary for decision of this appeal are that the plaintiff alleged that he entered into an agreement with the defendant for purchase of certain properties. It was alleged that the defendant refused to execute the Sale Deed, as such the plaintiff was required to obtain a decree from the Court for specific performance. It was also alleged in the plaint that the plaintiff had a cause of action in his favour and the suit was maintainable.

The defendant after notice appeared before the Court and submitted that the alleged agreement entered into

was entered in 3.2.1979. There was a flat refusal by the defendant and as the suit wss hopelessly barred by limitation, the plaint deserved to be rejected.

The trial Court before which written statement was already filed entertained the application and after holding that the suit is barred under clause (d) of Rule 11 of Order VII of the Civil Procedure Code directed rejection of the plaint.

The learned counsel for the appellant submits that the provisions of Order VII Rule 11 shall apply to a case where it does not disclose a cause of action; where the relief claimed is undervalued and despite direction of the Court he does not correct the valuation; where the relief claimed is properly valued but proper Court fees is not paid; where the Suit appears from the statement in the plaint to be barred by any law; where it is not filed in duplicate; where the plaintiff fails to comply with sub-Rule (2) of Rule 9 and where the plaintiff fails to comply sub-Rule (3) of Rule 9. The submission is that the Court proceeded under sub-Rule (d) of Rule 11 but without appreciating that the suit was not barred under some law. The submission is that the Suit may be barred by

limitation but the Civil Court if has jurisdiction to decide the dispute between the parties then it cannot be said that such a Suit is barred by any law. It is submitted that in a given case if the suit is not within limitation then the Civil Court cannot refuse to entertain the suit but may or may not grant decree. The submission is that question of limitation would not fall within the swoop and scope of clause (d) of Rule 11 of Order VII of the Civil Procedure Code.

The learned counsel for the respondent on the other hand vehemently submitted that if the suit appears to be barred by limitation from the pleadings and statement made in the plaint then no useful purpose would be served by going on with the ordeal of the trial and even otherwise the suit would be barred by law as it would be held to be barred by limitations and therefore would be barred by some law. Placing strong reliance on the judgement of the Single Judge in the matter of Lalubhai Hirabhai Patel & Anr. Vs. Indo-Japan Industries reported in 2001(3) GLR 2254 it is submitted that if the suit appears to be barred by limitation then no relief can be granted.

Order VII Rule 11 (“for the purpose of this appeal”) observes that the plaint shall be rejected in the following cases:

clauses (a), (b), [c] .....

clause (d) – where suit appears from the statement in the plaint to be barred by any law.

A suit which is barred by limitation cannot be said to be a suit barred by any law; the Court has jurisdiction to entertain the suit but would be precluded from granting any relief to such a person because he has lost his remedy by lapse of time. A suit cannot be said to be barred by any law if the Civil Court otherwise can entertain suit and is also entitled to grant relief. It cannot be argued that if a suit for specific performance is filed within limitation then the suit would not be maintainable. In a given case the Court may or may not grant a decree in favour of the plaintiff and even in a given case where it does not grant a decree it would not say that the suit is barred by some law or any law. The Civil Court would have jurisdiction to decide civil disputes and a matter relating to specific performance of the agreement would be a civil dispute between the parties.

Article 54 of the Limitation Act provides limitation of 3 years for filing a suit for specific performance of the agreement from the date when the cause of action accrues in favour of the plaintiff, it may be within 3 years from the date of the agreement or within 3 years from the date of last extension or within 3 years from the date of refusal. The question would be a question to be decided as an issue after the same is cast and not under Order VII Rule 11. There may be myriad examples but to cite few we may say that a suit challenging assessment under the Sales tax, Income-tax or property Tax is barred by limitation. Suits between workmen and employers which can be tried by Labour Court would not be entertained by Civil Court as the same would be barred by law. A suit to challenge election to be held under the Representation of People Act would be barred. A suit of such other nature would be barred including a suit where the conviction and award of sentence by Criminal Court is challenged before a Civil Court. Suits which are not entertainable under some law must be read in the said law and not by aid and help of the limitation. In the present matter without casting issues the learned trial Court proceeded to entertain the application filed under Order VII Rule 11

of the Civil Procedure Code.

When the parties have filed their pleadings then a duty is cast upon the Court to cast issues and then to proceed with the trial. If the Court is of the opinion that particular issues are pure question of law and can be decided without recording any evidence then such issues can be decided as preliminary issues under Rule 2 of Order XIV and if the Court otherwise holds then all the issues shall be tried together.

In the present matter the Court below was obliged to cast the issues and decide the matter in accordance with law. The Court below, in the considered opinion of this Court, acted illegally in entertaining the application filed by the respondents.

At this stage the learned counsel for the respondent submitted that the trial Court be required to cast issues and decide the question of limitation as a preliminary issue. We refrain to make any observation on that request because the said request will have to be made by the present respondent before the trial Court. We, however, observe that if application is filed by the

present respondent for treating the issue of limitation as a preliminary issue then the application shall be decided on its own merits.

The order passed by the learned trial Court below deserves to be set aside and is accordingly set aside. The appeal is allowed. The parties present in the Court shall appear before the trial Court on 10th October, 2005.

Section 13 of the Court Fees Act, 1870 provides that if appeal or plaint which has been rejected by the lower Court on any of the grounds mentioned in the Civil Procedure Code is ordered to be received or if a suit is remanded in appeal on any of the grounds mentioned in the provisions of the Civil Procedure Code for second decision by the lower Court, then appellate Court shall grant to the appellant a certificate authorising him to receive back from the Collector full amount of fees paid on the memo of appeal.

In the present matter the trial Court had dismissed the suit/rejected the plaint on a technical ground and as the said order is being set aside by us, the appellant would be entitled to a certificate under Section 13 of

the Court Fees Act for refund of the Court fees. The Registry is hereby directed to issue necessary certificate for refund of the Court fees in favour of the appellant.

For the satisfaction of the respondent it is hereby made clear that we have not decided anything on merits of the matter but have set aside the order passed by the Court below on the question of law only.

(R.S. GARG, J)

(K.M. MEHTA, J)

(pkn)